

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF MCI FOR EXEMPTION FROM)
THE REGULATION FOR ENHANCED SERVICES) CASE NO. 92-552

O R D E R

On December 15, 1992, MCI Telecommunications Corporation ("MCI") filed a petition pursuant to KRS 278.512 and KRS 278.514 requesting that its enhanced services be exempted from regulation. The Attorney General, by and through his Utility and Rate Intervention Division, requested and was granted intervention. On March 26, 1993, the Commission requested MCI to furnish additional information. MCI filed its responses to the Commission's Order and there being no requests for a hearing on the petition, the matter was submitted for decision based upon the case record.

BACKGROUND

On August 1, 1991, the Commission initiated Administrative Case No. 338¹ to investigate the provision of enhanced services within the state. In its Order the Commission adopted the Federal Communications Commission's ("FCC") definition of "enhanced services" set forth in 47 C.F.R. Sect. 64.702(a). The FCC distinguished enhanced services from basic services by their functional characteristics. Basic telecommunications services were defined as virtually bare transmission capacity, provided by a

¹ Administrative Case No. 338, Inquiry Into The Provision of Enhanced Services in Kentucky, Order dated August 1, 1991.

common carrier for the movement of information between two points while enhanced services provide more than bare transmission capacity.

The FCC's definition of "enhanced services" refers to three service classes: "services, offered over common carrier transmission facilities that. . . (1) Employ computer processing applications that act on the format, content, code, protocol, or similar aspects of subscriber's transmitted information; (2) Provide the subscriber additional, different, or restructured information; or (3) Involve subscriber interaction with stored information." 47 C.F.R. Sec. 64.702(a).

DISCUSSION

In evaluating MCI's petition for exemption of its enhanced services, the Commission is bound by KRS 278.512 and KRS 278.514. KRS 278.512 provides that the Commission may exempt telecommunications services and products or may reduce regulation if it determines that exemption or alternative regulation is in the public interest. The statute identifies eight criteria to be considered by the Commission when making this determination and permits the Commission to consider any other factors it deems in the public interest.

The first three subsections of KRS 278.512(3) focus on the existing conditions of the market. KRS 278.512(3)(a) requires the Commission to consider the extent to which competing telecommunications services are available in the relevant market. In response to the Commission's Order of March 26, 1993, MCI described six

enhanced service offerings including MCI EXPRESSINFO, MCI MESSENGER, MCI VOICE MAIL/800 ANSWERING SERVICE, MCI ENHANCED TELEX SERVICES, MCI MAIL and MCI FAX SERVICES. For each service MCI presented detailed information on competing services and providers.

Under Subsection (3)(b) of KRS 278.512, the Commission must also consider the existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available. In its response to the Commission's March 26, 1993 Order, MCI identified several providers of functionally equivalent or substitute services of each MCI service described. If the competitors were regulated companies, MCI provided the tariffed rate for the competing services.

KRS 278.512(3)(c) requires the Commission to consider the number and size of competitive providers of services. In response to the Commission's Order, MCI identified large interexchange carriers, such as AT&T and Sprint; significant national publications, such as the Wall Street Journal and USA Today; and important state and regional publications, such as the Louisville Courier-Journal as competitors of MCI EXPRESSINFO. Competitors of MCI FAX SERVICES include AT&T, Sprint, Graphnet, TRT/FTC, and Compuserve. Foreign telecommunications companies are also minor players in this market. The size and variety of competitors for these services are indicative of the competitors for MCI's other enhanced services.

KRS 278.512(3)(e) requires the Commission to consider the existence of adequate safeguards to assure that rates for regulated

services do not subsidize exempted services. MCI asserts that a fully competitive marketplace is the most effective way to prevent cross-subsidization. The present enhanced service market is very competitive and will assure the least cost, lowest price, most technologically advanced and most cost efficient provision of service. MCI is a non-dominant carrier and does not possess the market power sufficient to sustain rate increases. In Administrative Cases No. 273, the Commission designated MCI a non-dominant carrier, stating that InterLATA telecommunications firms seeking initial certification that are without substantial market share and cannot exert monopoly pricing power are non-dominant firms for regulatory purposes.²

Subsections (3)(f) and (g) require the Commission to consider the impact of proposed regulatory change upon universal availability of basic telecommunications services and upon the need of telecommunications companies to respond to competition, and upon the ability of a regulated utility to compete with regulated providers of similar services or products, respectively. Enhanced services are not, by definition, basic telecommunications services. Further, MCI does not provide basic local exchange telephone services in the Commonwealth of Kentucky. Hence, exempting MCI's enhanced services from regulation would have no impact on universal availability of basic telecommunication service.

² Administrative Case No. 273, An Inquiry Into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky, Order dated May 25, 1984, page 38.

Commission regulation of MCI's enhanced services could hamper MCI's ability to react quickly to market changes and thereby restrict its ability to compete with providers of equivalent and substitute services. It could also hinder MCI's ability to compete with non-regulated providers and have a detrimental affect on the market place. As MCI neither controls bottleneck facilities nor exercises market power in Kentucky's enhanced service market, no purpose would be served by subjecting its enhanced services to these potentially detrimental effects of regulation. After considering the statutory criteria contained in KRS 278.512, the Commission finds that exempting MCI's enhanced services from the provisions of KRS Chapter 278 is in the public interest.

Exemption of enhanced services does not mean that adequate safeguards do not exist to protect customers from unfair treatment, poor service quality, or excessive prices. Though the market will discipline companies offering enhanced services, customers are encouraged to exercise their option of filing complaints with the company and the Commission.

Although MCI's investment, revenues, and expenses associated with enhanced services will not be considered by the Commission in approving rates for MCI's services, the Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514. MCI shall continue to fulfill all reporting requirements of KRS Chapter 278 and Commission Orders.

IT IS THEREFORE ORDERED that the enhanced services specifically described in MCI's petition are exempted from regulation, pursuant to KRS 278.512 and KRS 278.514.

Done at Frankfort, Kentucky, this 18th day of October, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director